IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/04/2004

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The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY
and
The Honourable Mr.Justice P.K.MISRA

T.C.No.402 of 2001

Sri.AR.Alagappa Chettiar ... Appellant

-Vs-

The Income Tax Officer,
Ward I(1),
Karaikudi ... Respondent

This appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal "A" Bench, dated 9.9.2001 in ITA No.2203/Mds/95.

!For Appellant : Mr.C.V.Rajan

^For Respondent : Mr.T.Ravikumar
Junior Standing Counsel

:J U D G M E N T

A.S.VENKATACHALAMOORTHY, J.
This appeal is directed against the order of the Income-Tax Appellate Tribunal, upholding the orders of the authorities below and it pertains to the assessment year 1991-1992. The dispute relates to the computation of long term capital gains arising out of the transfer of 4 198 shares held by the appellant in M/s Consolidated Coffee Limited (hereinafter referred to as 'CCL') to M/s Tata Tea Limited (hereinafter referred to as 'TTL').

2. The appellant was holding 4198 shares in CCL. The TTL desired to acquire the majority shares in CCL and this prompted TTL to make an open offer to the shareholders of the CCL. The offer was to the effect that for transfer of every two shares of CCL to TTL, the latter would give a consideration in cash of Rs.100/- and one equity share of face value of Rs.10/- out of the fresh issue of TTL. This offer was made by TTL on 20.10.1989 and the same was accepted by the appellant. Following this, TTL

formalised the contract by sending the transfer deed for the transfer of shares in CCL, on 31.10.1990. The appellant received the consideration as stipulated in the offer i.e, Rs.100 /- in cash and a fresh issue of one equity share in TTL of the face value of Rs.10/- for every two shares in CCL. The appellant while submitting his return for 1991-1992, apparently worked out the capital gains pertaining to 4198 shares of CCL by taking the sale consideration of Rs.55/- per share, which figure he arrived at by calculating as follows,

Rs.100/- + Rs.10/-
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The Assessing Officer, however took note of the fact that by a letter dated 8.10.1990, the TTL informed the appellant that the market price of each share of TTL has gone up to Rs.450/- and proceeded to find out the value of the shares of TTL as on 31.10.1990 as per the daily official listing of Bombay Stock Exchange. The Assessing Officer found, the Stock Exchange mentioned

Rs.400.25 as value of one share of TTL and adopting that, computed the full value of the consideration received by the appellant at Rs.10,50,025/- (2099 TTL shares at Rs.400.25 + Rs.2,09,900 (2099 x 100)).

3. The appellant filed an appeal before the Commissioner of Income Tax contending that the Assessing Officer ought to have taken only the face value of the equity share of TTL at Rs.10/- and not the market value at Rs.400.25. However, this contention was not accepted by the appellate authority, which prompted the appellant to file an Income Tax Appeal before the Income Tax Appellate Tribunal, Madras. By an order dated 4.9.2001, the Tribunal dismissed the appeal upholding the orders of the authorities below. Being aggrieved by the orders referred above, the appellant has filed this appeal before this Court.

4. The question is, for the purpose of computing the consideration received for transfer of shares in CCL, whether the market value of the shares of TTL allotted to the assessee should be adopted or the value of the said allotted shares shown as paid up in the books of accounts of TTL ?

5. This Court is inclined to consider the entire matter in the way indicated hereunder. Just like the appellant/assessee, number of other shareholders in CCL transferred their shares in CCL and in exchange, got shares in TTL and also Rs.100/- for each share in TTL. One such person was Smt.AL.VE.Muthayee Achi. The Tribunal considered her case in ITA No.2452 of 1995 and fixed the value of one TTL Share at Rs.147/-. In fact that order of the Tribunal has been extensively quoted in the present order passed by the Tribunal. After so quoting, the Tribunal has observed as follows,

"... Because the shares of Tata Tea Ltd., were marketable and had a market value of Rs.147 on 31.12.1990, the Assessing Officer took the sale consideration at Rs.247, that is Rs.147 being market value plus Rs.100 as total sale consideration. This is what has been applied by the Tribunal in the case referred to earlier. ..."

After so pointing out, the Tribunal proceeded to observe as follows,

"... There being no other material difference in the facts of the case before us, the issue having been examined on all fours by the Tribunal supra,

following the earlier order of the Tribunal, we uphold the orders of the authorities below and dismiss the appeal of the assessee."

If the Tribunal is following the earlier order passed in Tmt.AL.VE. Muthayee Achi's case referred by us supra, then the Tribunal should have fixed the value of TTL at Rs.147/-. In that event, the Tribunal cannot dismiss the appeal filed by the assessee. The reading of the order of the Tribunal as a whole would only show that the Tribunal came to the conclusion that one share of TTL has to be fixed at Rs.147/-.

6. That apart, even on the ground of equity, fairness and reasonableness, the revenue, having accepted the value of one share at Rs.147 /- with reference to another assessee identically placed, cannot be permitted to fix a higher value for a share in TTL at the relevant time.

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7. In this view of the matter, we allow the appeal in part and hold that the revenue shall proceed to calculate on the basis of the value of one share of TTL at Rs.147/- and claim on that basis, the tax due from the assessee.

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To

1. The Registrar, Income Tax Appellate Tribunal 'A' Bench, Madras.
2. The Income Tax Officer, Ward I(1), Karaikudi

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